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Application No. 05 711 246.8 - 2101	Ref. X16603 EP	Date 26.02.2008
Applicant ELI LILLY AND COMPANY		

**Communication pursuant to Article 94(3) EPC**

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(2) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

**of 4 months**

from the notification of this communication, this period being computed in accordance with Rules 126(2) and 131(2) and (4) EPC.

One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (R. 50(1) EPC).

**Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Art. 94(4) EPC).**



Lauro, Paola  
Primary Examiner  
for the Examining Division



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Enclosure(s): 2 page/s reasons (Form 2906)

The examination is being carried out on the following application documents:

**Description, Pages**

1-78 as originally filed

**Claims, Numbers**

1-7 received on 06.11.2006 with letter of 06.11.2006

1. In claim 1, the definition of W has been limited to the imidazole of formula (I) and for R the definition SO<sub>2</sub>R<sub>7</sub> has been deleted. The support for such amendments can be found on page 8 of the description as originally filed, line 4 (Imidazole (I) is preferred) and line 26 (in which SO<sub>2</sub>R<sub>7</sub> is not mentioned within the preferred options for R). The amendments are therefore considered to comply with the requirements of Article 123 (2) EPC. It is however noted that claim 1 contains an unclarity as regards the proviso that at least one of R<sub>2</sub> and R. is hydrogen or methyl, while, according to the definition, R<sub>2</sub> and R. taken together may form a fused ring. The proviso seems incompatible with said further definition for R<sub>2</sub> and R..
2. In view of the amendments, the disclosures of D1, D2 and D5 (the latter being considered for novelty purposes only, since the present application appears to be entitled to the priority date) are not any more prejudicial to the novelty of claim 1. Article 54 EPC is met.
3. **Inventive step**  
The problem underlying the current application resides in the provision of benzimidazole or benzotriazole characterized by an imidazole ring attached to the benzo ring of the benzimidazole moiety as kinase inhibitors.

Kinase inhibitors are disclosed in D2 to D4. The general formula of D2 comprises the

compounds of formula (I) of the present application.

Moreover, D3 discloses benzimidazole derivatives substituted by 5-heterocyclic rings, which only differ from the compounds of the present application in the presence of an oxo group in position 2 of the benzimidazole. In addition D4 generically discloses that imidazole attached to a benzimidazole are suitable as kinase inhibitors. The prior art is therefore considered to contain all information to arrive at the compounds of the present application with the expectation that they would possess kinase inhibitory activity. In the absence of experimental data which show unexpected effects for the compounds of the present application compared to the structurally closest compounds of the prior art, inventive step cannot be acknowledged.

4. Any amendments should strictly comply with Article 123(2) EPC and the description should be amended in accordance with any new claims to be filed.



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**LETTER ACCOMPANYING SUBSEQUENTLY FILED ITEMS**

The document(s) listed below is (are) subsequently filed documents pertaining to the following application:

Application number

05711246.8

Applicant's or representative's reference

X16603 EP

	Description of document	Original file name	Assigned file name
1	Amended claims	X16603 Response to Rule 109 110 EPC 6 November 2006.pdf	CLMSPAMD-1.pdf
2	Amended claims	X16603 EP Claims with Rule 109 110 EPC 6 November 2006.pdf	CLMSPAMD-2.pdf

	Factor applied	Fee schedule	Amount to be paid
	Payment		

**Annotations**

**Statement**

The undersigned hereby declares that the subsequently filed items do NOT contain or are NOT intended to contain any communication relating either to an appeal or to an opposition (OJ EPO 2003, 609: ".....This possibility is not yet available in opposition and appeal proceedings; in such proceedings, therefore, the electronic filing of documents is not admissible.").

**Signatures**

Place:

**Surrey UK**

Date:

**06.November 2006**

Signed by:

**GB, Eli Lilly and Company Ltd, I. Burnside  
1594**

Capacity:

**(Representative)**



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6 November 2006

European Patent Office  
Patenlaan 2  
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NETHERLANDS

**ELECTRONICALLY FILED via EPOLINE**

Dear Sirs,

**Re: European Patent Application No. 05711246.8**  
**ELI LILLY AND COMPANY**  
**Our Case X16603 EP**

I refer to the Communication pursuant to Rule 109 and 110 EPC dated 19 October 2006 and submit herewith new Claims 1-7 to replace the existing Claims currently on file. Substantive Examination is requested on the basis of these new Claims.

I look forward to receiving the next Communication from the Examining Division in due course. Merely as a precaution, in the event that the Division contemplate refusal of this application I hereby request Oral Proceedings.

Yours faithfully,

**Dr I J Burnside GA307**  
European Patent Attorney

(Digitally signed during electronic filing)

Encs.

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**Answers That Matter.**

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